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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1943.

No. 665

BERNARD O. MATTSON,

Petitioner,

vs.

AMUSEMENT CORPORATION OF AMERICA,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

ALBERT G. MCCALEB,
HERBERT W. BYE,
For Respondents.

Chicago, Illinois,
February 22, 1944.

THE GUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

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MAY IT PLEASE THE COURT:

1. This is an ordinary patent case. More specifically, it is one in which petitioner sought to recover profits derived from the use of an infringing device.

2. The judgment of the trial court, awarding petitioner $12,390.54, correctly was reversed for want of evidence in the record to support it. In reversing the judgment, the Circuit Court of Appeals said:

> "In short, the case is entirely devoid of proof upon which a just estimate of profits could be made, and the judgment must be reversed for want of such proof, and the cause remanded for trial anew." (Opinion: R. p. 198.)

3. The petition, and brief in support thereof, *ignore* every of the authorities relied upon by the Circuit Court

of Appeals in reversing the judgment of the trial court. Such authorities are:

Mevs v. *Conover*, 23 L. ed. 1008.

Cambria Iron v. *Carnegie Steel Co.*, 224 Fed. 947.

Dunkley v. *Central Calif. Canneries*, 7 Fed. (2) 972.

National Carbon Co. v. *Richards & Co.*, 85 Fed. (2) 490.

O'Neal v. *San Jose Canning Co.*, 33 Fed. (2) 892.

Walker on Patents—Deller's ed. Vol. 3, pp. 2206 *et seq.**

Klooster's "Patent Accounting", pp. 395, 435 and 495.

(Opinion: R. p. 198.)

4. The decision of the Circuit Court of Appeals requires no reconciliation with the decision of any other court.

5. The petition presents three argumentative complex questions that do not accurately or fairly present any of the issues between the parties.

6. The petition, and brief in support thereof, are replete with assertions of alleged facts that have no basis in the record.

The petition for certiorari is entirely without merit and should be denied.

Respectfully submitted,

ALBERT G. MCCALEB,
HERBERT W. BYE,
For Respondents.

Chicago, Illinois,
February 22, 1944.

* The excerpt at petitioner's brief page 12 is not the one relied upon by the Circuit Court of Appeals.